

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35975

STATE OF IDAHO,)	2009 Unpublished Opinion No. 657
)	
Plaintiff-Respondent,)	Filed: October 28, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
MICHAEL GEORGE BLANCHARD,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Michael R. McLaughlin, District Judge.

Judgment of conviction and unified sentence of five years, with two years fixed, for aggravated assault, affirmed.

Molly J. Huskey, State Appellate Public Defender; Elizabeth A. Allred, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Rebekah A. Cudé, Deputy Attorney General, Boise, for respondent.

WALTERS, Judge Pro Tem

Michael George Blanchard pled guilty to aggravated assault, I.C. §§ 18-901(b), 18-905. Before sentencing, but after he had received the presentence investigation report, Blanchard moved to withdraw his plea of guilty under Idaho Criminal Rule 33(c). The district court denied the Rule 33(c) motion and entered a judgment of conviction. The court then imposed a unified sentence of five years with two years fixed. Blanchard appeals. He asserts that the district court erred in denying the Rule 33(c) motion and by imposing an excessive sentence. We affirm.

I.

BACKGROUND

While Blanchard was panhandling, he approached a family as they left a hockey arena. The family rebuffed him. Blanchard drew a knife, moved toward them and thrust the knife at them. The family called 911 and Blanchard was arrested. He was charged with aggravated

assault, the use of a deadly weapon in the commission of a crime and with being a persistent violator. Pursuant to a plea agreement, Blanchard pled guilty to the assault charge and the state agreed to dismiss the other two charges. In a seven-page guilty plea advisory form, Blanchard assured the court that he was under the care of a mental health care professional, had taken his prescription medications, that he fully understood the proceedings and there was no reason that he would be unable to “make a reasoned and informed decision in this case.” The district court accepted Blanchard’s guilty plea as knowing, intelligent and voluntary. The district court ordered Blanchard to obtain both a mental health and substance abuse evaluation prior to the scheduled sentencing hearing.

The presentence investigation report (PSI) was completed and delivered to the parties. The report details Blanchard’s extensive criminal history, transient lifestyle and addiction history, and specifically notes that Blanchard would be highly unlikely to successfully complete probation. The PSI also noted Blanchard’s mental health history, including previous evaluations that found Blanchard exaggerated his mental health issues, and that Blanchard would likely continue to be mentally ill without long-term drug and alcohol treatment. The report contained Blanchard’s self-assessment that a combination of Prozac and Lithium that he was taking at the time of the presentence interview “worked well together.” After receipt of a copy of the PSI and prior to sentencing, Blanchard’s attorney filed a motion to withdraw Blanchard’s guilty plea without proffering any argument or reason for the motion. At the initial hearing on the motion, the court allowed Blanchard additional time to file an affidavit or brief supporting the motion to withdraw the guilty plea.

Blanchard thereafter filed an affidavit and brief, citing “influence and pressure” by his counsel and improper medication leading to “severe psychosis that affected his decision” to plead guilty. However, at the subsequent hearing on the motion, Blanchard testified that his counsel did not make any threats or force him to plead guilty. He further testified that although he was “really set on going to trial,” his counsel explained to him the plea offer from the state of dismissing some charges and what the possible sentence would be and that he “understood what she was talking about.” He also testified that when he was first jailed on the assault charge, he was placed on Prozac to treat his bipolar mental illness and that Lithium was subsequently prescribed because his mood levels were too high and he was having trouble with his memory and understanding. He testified that on the day he entered his guilty plea, he was experiencing

“racing” thoughts and paranoia. He testified that he pled guilty in order to get to prison which was more of an “open space” than the jail and that he was willing to “sacrifice [his] innocence” to get there. He also testified that, at the time he entered his plea, he knew he was entering a guilty plea. When the district court asked Blanchard about his statement to the mental health evaluator, made twenty days after his plea, that he had not experienced any side effects while on the Lithium and Prozac combination, Blanchard had no explanation for why he had said that to the evaluator.

The district court denied Blanchard’s motion to withdraw his plea and imposed a unified sentence of five years with two years fixed. Blanchard then brought this appeal, arguing that the district court erred in denying the motion and by imposing an excessive sentence.

II.

STANDARD OF REVIEW

Each of the issues raised by Blanchard is reviewed as a challenge to the exercise of discretion by the district court. *See, e.g., State v. Harper*, 129 Idaho 86, 89, 922 P.2d 383, 386 (1996) (review of an order denying a Rule 33(c) motion to withdraw a plea); and *State v. Marsh*, 141 Idaho 862, 119 P.3d 637 (Ct. App. 2004) (sentence review); When a trial court’s discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the lower court reached its decision by an exercise of reason. *State v. Hedger*, 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989).

III.

ANALYSIS

A. Motion to Withdraw Plea

Blanchard moved to withdraw his guilty plea pursuant to I.C.R. 33(c), prior to the entry of a judgment of conviction and imposition of sentence by the district court. The withdrawal of a plea of guilty may be allowed in the trial court’s discretion and the scope of that discretion is affected by the timing of the motion. Where the motion is filed before sentencing, as it was in this case, the defendant need only show a “just reason” for withdrawing the plea. *State v. Ballard*, 114 Idaho 799, 801, 761 P.2d 1151, 1153 (1988). The withdrawal of a guilty plea

before a sentence is imposed is not an automatic right, and the defendant has the burden of proving that the plea should be allowed to be withdrawn. *State v. Dopp*, 124 Idaho 481, 485, 861 P.2d 51, 55 (1993). Once the defendant has met the burden of showing a just reason, the state may avoid a withdrawal of the plea by demonstrating the existence of prejudice to the state. *Id.*; *State v. Henderson*, 113 Idaho 411, 414, 744 P.2d 795, 798 (Ct. App. 1987). The defendant's failure to present and support a plausible reason will dictate against granting withdrawal, even absent prejudice to the prosecution. *Dopp*, 124 Idaho at 485, 861 P.2d at 55; *Henderson*, 113 Idaho at 414, 744 P.2d at 798.

In support of his motion to withdraw the guilty plea, Blanchard's counsel represented to the district court that Blanchard essentially wanted a jury to determine his innocence. However, "a declaration of innocence alone does not entitle a defendant to withdraw a guilty plea." *State v. Akin*, 139 Idaho 160, 163, 75 P.3d 214, 217 (Ct. App. 2003) (citing *State v. Knowlton*, 122 Idaho 548, 549, 835 P.2d 1359, 1360 (Ct. App. 1992)). The Idaho Supreme Court has held that "a denial of factual guilt is not a just reason for the later withdrawal of the plea, in cases where there is some basis in the record of factual guilt" *Dopp*, 124 Idaho at 486, 861 P.2d at 56. This Court previously has noted that if mere assertion of legal innocence were always a sufficient condition for withdrawal of a plea, withdrawal would effectively be an automatic right. *State v. Rodriguez* 118 Idaho 957, 960, 801 P.2d 1308, 1311 (Ct. App. 1990) (citing *United States v. Barker*, 514 F.2d 208, 221 (D.C. Cir. 1975)).

In ruling on Blanchard's motion, the district court considered Blanchard's representation that he had been coerced by his attorney to plead guilty and that he suffered from mental health issues at the time he pled. The court found that these claims were not supported by the record. The district court also considered the record of Blanchard's entry of the guilty plea. The court found that Blanchard's plea was entered knowingly and voluntarily, with understanding of the charge against him and without coercion. The court found that Blanchard was aware of the consequences of pleading guilty and was fully aware of the rights he would be waiving if he pled guilty. The district court's analysis was consistent with the admonition of the Idaho Supreme Court in *Harper*, 129 Idaho at 89, 922 P.2d at 386, where the court observed:

A trial court's discretion in ruling on a motion to withdraw a plea should be liberally exercised. [Citing *State v. Carrasco*, 117 Idaho 295, 298, 787 P.2d 281, 284 (1990).] In determining whether to grant a motion to withdraw a guilty plea, the trial court is only required to consider whether: (1) the plea was voluntary in

the sense that the defendant understood the nature of the charges and was not coerced; (2) the defendant knowingly and intelligently waived his right to a jury trial, to confront accusers, and to refrain from incriminating himself; and (3) the defendant understood the consequences of pleading guilty. *State v. Mauro*, 121 Idaho 178, 180, 824 P.2d 109, 111 (1991).

We have reviewed the record in light of the applicable standard of review. We conclude that the district court correctly perceived the issue presented by Blanchard's motion to withdraw his plea of guilty as one calling for the exercise of the court's discretion; that the court acted within the boundaries of such discretion and consistently with the legal standards applicable to the specific choices before the court; and that the court reached its decision by an exercise of reason. *Hedger*, 115 Idaho at 600, 768 P.2d at 1333. Accordingly, the order denying Blanchard's motion to withdraw his plea of guilty is affirmed.

B. Sentence Review

Next we consider Blanchard's contention that the district court abused its discretion by imposing an excessive sentence. Blanchard acknowledges that his sentence is within the statutory limit. However, he contends that his sentence is unreasonable under any view of the facts. He contends that the district court did not give proper consideration for his substance abuse problem and desire for treatment.

Both our standard of review and the factors to be considered in evaluating the reasonableness of a sentence are well established. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 650 P.2d 707 (Ct. App. 1982). An appellate review of a sentence is based on an abuse of discretion standard. *State v. Burdett*, 134 Idaho 271, 276, 1 P.3d 299, 304 (Ct. App. 2000). Where a sentence is not illegal, the appellant has the burden to show that it is unreasonable, and thus a clear abuse of discretion. *State v. Brown*, 121 Idaho 385, 393, 825 P.2d 482, 490 (1992). A sentence may represent such an abuse of discretion if it is shown to be unreasonable upon the facts of the case. *State v. Nice*, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982). A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary "to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case." *Toohill*, 103 Idaho at 568, 650 P.2d at 710. Where an appellant contends that the sentencing court imposed an excessively harsh sentence, we conduct an independent review of the record, having

regard for the nature of the offense, the character of the offender, and the protection of the public interest. *State v. Reinke*, 103 Idaho 771, 772, 653 P.2d 1183, 1184 (Ct. App. 1982).

Blanchard's claim that the district court abused its sentencing discretion is based on Blanchard's belief that the court did not properly consider Blanchard's substance abuse problem and his desire for treatment, his mental health issues, and his remorse. To the contrary, the record demonstrates that at sentencing, the district court specifically addressed Blanchard's mental health, alcohol and drug abuse history and stated remorse. At a hearing on a Rule 35 motion to reconsider Blanchard's sentence, the district court explained:

The fundamental concern for the Court in sentencing Mr. Blanchard was public safety. The defendant continues to ingest controlled substances and to violate the law. The defendant, although provided opportunities to deal with his substance abuse issues in a responsible manner, has declined to do so and continues then, because of mood swings and the exacerbation of those as a result of the use of controlled substances and alcohol, continues to constitute a threat to society that cannot be any better demonstrated than [by] the crime for which he entered a guilty plea in this case.

In the instant offense, Blanchard pulled a knife on a man who had pushed Blanchard away from his son when Blanchard got within two inches of the boy, frightening him. The aggravated assault represented Blanchard's fifth felony conviction since 1989. Over the course of his contact with the criminal justice system, Blanchard's drug, alcohol and mental health issues have been readily apparent, and Blanchard has been given several opportunities for treatment, to no avail.

We conclude that the district court properly considered the relevant objectives and goals of sentencing when imposing Blanchard's sentence. In light of the nature of the offense, Blanchard's character and his background and history, and considering the protection of the public interest, we hold that the district court did not abuse its discretion by imposing a five-year unified sentence, with two years fixed, for the aggravated assault.

IV.

CONCLUSION

The district court did not abuse its discretion when denying Blanchard's motion to withdraw his plea of guilty. The district court did not abuse its discretion in imposing the sentence. The judgment of conviction and sentence are affirmed.

Chief Judge LANSING and Judge MELANSON **CONCUR.**